THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

MICHAEL EDWIN SMITH, individual,	)	
Plaintiff,	)	
-vs-	)	No. 17-CV-90 RAW
BOARD OF COUNTY COMMISSIONERS, MUSKOGEE COUNTY;	)	
ROB FRAZIER, SHERIFF OF MUSKOGEE COUNTY, in his Official Capacities;	)	
TURNKEY HEALTH CLINICS, LLC,	)	
DOES II through XX,	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF MICHAEL SCOTT SMITH, APRN

TAKEN ON BEHALF OF THE PLAINTIFF

IN MUSKOGEE, OKLAHOMA

ON AUGUST 18, 2018

COMMENCING AT 8:20 A.M.

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REPORTED BY: CYNDI WHITE LARIMER, CSR

EXHIBIT
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relevance of any of them. Maybe we need to chat later about that. I'll go look at your discovery requests and then we'll chat.

MR. HOWE: Yeah. That would be fine. Just rather than continuing to ask him and try to guess how much he makes. If he's got a vow of poverty, I don't want to go into that with him.

MS. AH LOY: And I don't want to argue on the record, but I don't know what his salary would have -- what bearing it would have on any of the issues in -- we can discuss this off the record later.

MR. HOWE: Sure.

Q (By Mr. Howe) When you would do your sick call visits -- you said you would do them two times a week --

A Two days out of the week. Yes, sir.

Q What two days would you do them out of the some week while you were an employee with Turn Key?

A With Turn Key, as best as I can recollect, it was on Monday and Thursdays.

Q Were there certain hours?

A Usually I would finish up with my own clinic generally around 4:00 p.m. to 4:30 and then report to the jail.

Q And then how long would you be at the jail for?

A Until I completed my duties there.

Q Generally, if you got to the jail at about 4:30, when would you generally complete all your duties?

A About three hours.

Q So about 7:30, 8:00?

A 7:30ish. And that is still the case.

Q When you say "sick call," I have an understanding of what that is, but for members of the jury who don't know, explain to me what sick call is.

A It is any individual who has a complaint that is serious enough to require, in their estimation, that they need to seek treatment.

Q Okay. How do inmates provide notice that they need to be seen?

A Currently, there is what's called a kiosk. They can communicate electronically, or I believe at that time they could also do it written or even verbal.

Q Going back to -- what we want to do is we want to narrow down to a window of time from what I believe are -- what the relevant dates are in this case from March 15, 2016, to April 2nd, 2016.

A Uh-huh.

Q Do you recall how inmates were able to request -- or how you would know to provide --

A I don't.

Q -- medical services?

A I do.
Q What is the first memory that you have of Michael?
A I visited with him physically.
Q And just without looking at your notes. I mean, I'll let you refer to your notes. I'm just saying, with -- in your mind, I want to make sure that I know you're talking about the same person.

What do you remember about Michael when you first came in contact with him or can you describe what he looked like?
A He was an African-American gentleman, approximately 50 years of age.
Q And where did you first come into contact with him?
A At the Muskogee County detention facility.
Q Where in the facility?
A In the medical section.
Q When you say "the medical section," are you saying -- is it a medical exam room?
A It is.
Q Do you recall the reason why you went to go see Michael Smith?
A Yes.
Q What is the reason why?
A He had complained of elevated blood pressure and back pain.

A No.
Q So you wouldn't know that person by name?
A No. Nor by sight.
Q Fair enough. Do you -- when you -- strike that.
When Michael Smith was brought to you, you said he was brought to you by a runner. Do you know whose request that was at?
A I believe it was Michael's.
Q Do you know why Michael requested to see you?
A He had two complaints. The first was elevated blood pressure. The second was back pain.
Q When you saw Michael, was -- you say it was because of elevated blood pressure. But did Michael say he wanted to see you because he had high blood pressure, or was it because somebody in the jail examined him before he got to you?
A Both.
Q -- and then -- hold on a minute.
A Okay.
Q -- and then decided that he needed to see you because during the exam they determined he had high blood pressure?
A Michael was very concerned about blood pressure and his heart, by his own admission, as well as back pain. He had a documented history, even on the outside, prior

about his heart and also he was complaining of back pain. Do you recall just testifying to that?

A Yes, sir.

Q When you were notified of that and you examined him, did you then engage in any action to determine what his medical history was?

A Yes, sir.

Q Okay. Who did you contact?

A I contacted two people. I contacted his cancer doctor, Dr. Eckenrode, and I contacted his urologist, Dr. Gaillich.

Q How did you know to contact Dr. Eckenrode?

A He told me.

Q "He" being Michael?

A Michael encouraged me to contact them.

Q Why did he encourage you to contact his cancer doctor?

A Because he felt that that would give a better picture of his medical condition.

Q And did he also tell you to contact Dr. -- is it Gaillich?

A Yes.

Q And you contacted Dr. Gaillich too?

A Both -- yes, sir. Both the urologist, Dr. Gaillich, as well as Dr. Eckenrode.

Q In the bottom right-hand corner, it says 3/16/16 and then it has initials. Are those your initials?

A Those are my initials, yes, sir.

Q So where did these -- I'm trying to figure out where did you physically receive these documents?

A At my office. My private office.

Q And you initialed them?

A I did.

Q So does --

A Which means I reviewed them.

Q Does that mean that you reviewed them on March 15th, 2016?

A Yes, sir.

Q In reviewing these documents, the record that I want to turn your attention to on TK006, the first page, these documents, did they provide you knowledge that John Eckenrode was Michael Smith's oncologist?

A Well, it was only one visit.

Q I didn't ask that question. I said in -- so I just want to make sure you answer -- or I ask a good question so you can answer it. And maybe my question was unclear, so let me try this again.

A Uh-huh.

Q The records that we're referring to, that are Bates-stamped 6, 7 -- 6 through 11, these are records you

received on March 15, 2016, and reviewed; correct?
A Yes, sir.
Q And the first record that we see is it's a record of John -- from provider John Eckenrode.
A Uh-huh.
MS. AH LOY: Is that a yes?
THE WITNESS: Yes. Thank you.
Q (By Mr. Howe) And it says that Michael Smith was diagnosed with prostate cancer metastatic to bone. Did you have that knowledge?
A Yes, sir.
Q Have you reviewed that?
Also from this record, were you able to determine that Michael was diagnosed in 2012 at OSU and was metastatic?
A Yes, sir. Stage 4. There's no cure.
Q It also says in those records he was radiated twice, apparently once to his spine, the T11, thoracic 11 vertebra --
A Uh-huh.
Q -- and also his pelvis; correct?
A Correct.
Q And it also stated that he sees a pain specialist for his cancer pain; correct?
A Correct.

Q And it also states that -- and this is a record from February 8th, 2016, of John -- from John Eckenrode, but it also states that his PSA was about a 5.

A Five.

Q I'm not an oncologist.

A Uh-huh.

Q Are you familiar with what a PSA of 5 means?

A What it is, a PSA is a prostate specific antigen. It is a screening test, first of all, that is imprecise. The upper level of normalcy would be considered 4. In a person with documented prostatic cancer, it would not be unusual to have it even slightly higher than 4. It can go much, much higher.

But, again, I too am not an oncologist.

Q When you reviewed this first page, 6, it was apparent to you that Michael had serious medical health issues?

A That were not curable.

MS. AH LOY: Object to the form. Sorry.

Q (By Mr. Howe) Okay. Based on this record, were you able to determine whether Michael Smith had a serious medical issue?

A Yes.

Q On page 2 of this record, if you'll turn the page -- it says number 7 -- it also states that Michael Smith was

receiving leuprolide acetate injections. Is that an injection?

A It is.

Q And what is that injection for? What does it treat?

A It treats advanced prostate cancer. It is designed to, essentially, block androgen.

Q So that's a cancer medication?

A It's a cancer medication but it is not a curing medication.

Q Yeah. But Dr. Smith, you continue to --

A Nurse Practitioner Smith.

Q I thank you for saying that.

A Yes.

Q Nurse Smith -- Nurse Practitioner Smith --

A Yes, sir.

Q If I say nurse, is that fine or do you want --

A That's fine.

Q Just not doctor.

A No. No.

Q Okay. I agree.

Okay. So, Nurse Smith, my question, though, I'm not asking you if Michael Smith's cancer was curable.

A Yes.

Q My question is he was at a progressive stage of cancer and it was apparent that he was also actively

receiving cancer medication and injections as of February of 2016; correct?

A Correct.

MS. AH LOY: Object to the form.

THE WITNESS: Oh.

MS. AH LOY: Sorry. Go ahead.

Q (By Mr. Howe) Then as we turn the page --

A Oh, wait, wait, wait. His next lupon injection was not due for some time.

Q Sir --

A In six months.

Q -- I ask the questions.

MR. ARTUS: I think he has a right to clarify.

MR. HOWE: No, he doesn't.

MS. AH LOY: He has a right to fully answer your questions.

MR. HOWE: He did answer it, didn't he?

THE WITNESS: No, no, no.

MS. AH LOY: No. He was clarifying his answer right there.

MR. ARTUS: Well, I think you were implying that he had these shots that were regularly needed and in fact the shots were given every six months and he was clarifying that the next one was in May.

THE WITNESS: He was not due for the next shot

until actually December -- I'm sorry -- yeah. He received it December 10th. He would not be due again until June the 10th.

MR. HOWE: Okay. Again, I don't think that was in response to my question. I'd move to strike as nonresponsive.

Q (By Mr. Howe) However, I'll ask you my next question. And again, I appreciate you taking a pause while the lawyers --

A Sure.

Q -- talk that out.

Now, as I take you to page 9, which is two pages after, in reviewing this record, was it clear to you that Michael Smith was diagnosed with prostate cancer metastatic to the bone?

A Yes, sir.

Q Was it also clear to you that a whole body scan was being ordered on -- as a result of this encounter?

A It had already been completed.

Q Well, the body scan actually happened after.

I mean, we'll get to that. But was it -- where it says assessment plan on this record, in reading this record, was it your understanding that a body -- on page 10 -- that a body scan -- excuse me -- an NM bone scan, what does that mean?

A What it is is an entire body scan in which a radioisotope is injected, you wait a period of time and the entire body is scanned. And it can pick up what we refer to commonly as hotspots or evidence of metastasis. And that was reviewed.

Q And according to this record --

A Uh-huh.

Q -- was it also -- on page 10 it also states that he was to return in about three months from February 8th; correct?

A Correct.

Q So that would mean that he would have been -- he was supposed to go back and see -- let me ask you this: Based on that, did you have reason to believe he was supposed to go back and see his oncologist on May 8th of 2016?

A When I contacted both medical offices, they were very consistent in Mr. Smith's noncompliance with medical directions.

Q Okay. Well, that's what I have some questions about. I didn't ask you that question.

A Uh-huh.

Q But what I want to know is: In reviewing this record that I'm referring to, how does it show that Mr. Smith was noncompliant? What was he doing, in your

opinion, or that -- Or let me ask you this: Who told you that Mr. Smith was noncompliant in his medical treatment?

A Both Dr. Gaillich and Dr. Eckenrode.

Q What was Michael supposed that do that Dr. Eckenrode said he wasn't doing?

A It was his impression that Michael was more interested in obtaining certain controlled medicines than any actual treatment.

Q Well, I didn't ask -- that's speculating on what he knows. His impression -- are you saying it was his medical opinion --

MR. ARTUS: Now, wait a minute. Objection. You did ask him and he answered.

MR. HOWE: He said impression. I don't -- impression, if it's my impression.

THE WITNESS: Uh-huh.

Q (By Mr. Howe) Okay. I'm asking --

A He told me.

Q Okay. But when you -- when people in the health profession use the word "impression," that may mean something different. So when you say impression, are you saying it was his opinion?

MS. AH LOY: Object to the form.

Q (By Mr. Howe) Well, I don't know what impression means. Can you say another --

MS. AH LOY: Object to the form.
MR. ARTUS: He just clarified that.
MR. HOWE: Well, okay. Well --
MR. ARTUS: He said he told him that.
MR. HOWE: That's not a proper objection.
Q (By Mr. Howe) I don't know what impression means. When I read a medical record, it says impression or plan. What does impression mean?
MR. ARTUS: Objection. Asked and answered.
Q (By Mr. Howe) Well, answer it, please, because I still don't know what impression means. What does that mean, it's his impression? When the doctor says, "It's my impression," what is another word for impression? Because I don't understand what that means.
MS. AH LOY: Object to the form.
You can answer if you can.
Q (By Mr. Howe) Yeah. It's just going to help me gain clarity.
A It was his opinion that Michael was not serious about seeking actual treatment.
Q What exactly, other than his impression that Michael wanted pain meds and didn't want his cancer treated -- you said he wanted narcotic pain meds -- what was --
A I did not say narcotic pain meds.
Q Okay.

A I said controlled substances.
Q Well, is that a narcotic pain med like hydrocodone?
A It was -- with Dr. Eckenrode, I believe it was Xanax.
Q Okay. So what was Michael doing that was noncompliant to his cancer treatment? Did Dr. Eckenrode tell you that?
A No.
Q But it's your testimony that Dr. Eckenrode told you that Michael was noncompliant with his cancer treatment?
A Yes. With following up.
Well, that's actually Dr. Gaillich's office.
Q Dr. Gaillich --
A He only had one visit, I believe, with Dr. Eckenrode.
Q But Dr. Gaillich is the urologist.
A Correct.
Q Dr. Eckenrode is the oncologist.
So did Dr. Eckenrode say anything to you, to the best you can recall, that Michael was noncompliant with his cancer treatment?
A He believed he was more interested in obtaining Xanax.
Q That's what Dr. Eckenrode said?
A Uh-huh.

Q Did he say anything else?
A No.
Q Okay. Now let's go to Dr. Gaillich.
A Except I don't believe he really regarded him as his patient when he I think saw him only the one time.
Q Well, are you just guessing on that? Can you say that for certain?
A No.
Q What about Dr. Gaillich?
A That was -- I believe Michael had actually started treatment with Dr. Gaillich and then Dr. Gaillich referred Michael to Dr. Eckenrode.
Q Okay. What was Dr. Gaillich saying Michael was noncompliant about?
A Following up on appointments.
Q Did he tell you that he had missed a recent appointment?
A No.
Q How was how long was the conversation that you had with Dr. Eckenrode?
A Oh, probably three to five minutes.
Q It was a phone conversation?
A It was a phone conversation.
Q Did you request any additional records to determine what this alleged noncompliance was?

A No. No.
Q What about Dr. Gaillich? Did you speak to him personally on the phone?
A It was either himself or one of his assistants. I'm not sure who.
Q Well, do you know if it a receptionist or --
A Oh, no. No. It was a provider.
Q Okay. I just wanted to make sure.
A Yeah.
Q So with Dr. Gaillich, other than you say Michael not following up with appointments with his urologist, what else was he noncompliant about according to Dr. Gaillich?
A That's all I recall.
Q How long was your phone conversation with Dr. Gaillich or the assistant?
A About the same, three to five minutes.
Q Whether Michael Smith was compliant or not with his cancer treatment, how would that effect the way that you would treat him as a patient?
A It would not.
Q How would it affect the way you would treat him as a patient with a serious medical condition?
A It would not.
Q So why is his compliance relevant?
MS. AH LOY: Object.

A Yes, sir.
Q And again, when we're saying March 15th, we're talking about 2016?
A Yes, sir.
Q Did you also receive Number 15 on March 15th?
A Yes, sir.
Q Did you also receive page number 1 on March 15th?
A No, sir.
Q Okay. That's helpful. Thank you.

MS. AH LOY: And just for purpose of the record, I will advise you that that fax at the top, the 6/19/18, I believe that was the fax to me.

MR. HOWE: Sure.

MS. AH LOY: Yeah.

MR. HOWE: Sure.

MS. AH LOY: So that's not him.

MR. HOWE: Okay.

Q (By Mr. Howe) Is it fair to -- looking at the rest of these documents in this stack that I gave you -- and I'll give you a binder clip too.
A No, that's okay. I have mine properly organized.
Q Okay. Great.
A Yours are not properly organized.
Q Okay. Great.
Were there any other records that you received on

is put?
A To make sure that they had also these records, I brought a copy with me, and they assured me that they had the copies.
Q That they had the copies before you brought them on the 21st?
A Uh-huh.
Which I applaud them for taking the initiative, whoever requested them.
Q So when you got to the jail, did you pull a file of Michael Smith or did you just bring your records?
A I do not recall.
Q You received these records on March 15th. You went and saw Michael Smith on March 21st. Correct?
A Correct.
Q Did anybody from the jail, whether it be Turn Key employees, medical staff, jail superintendent, detention officers, did anybody from the jail contact you regarding their treatment of Michael Smith?
A Yes.
Q Who contacted you?
A Amity Williams.
Q Do you recall when she contacted you?
A I do. It was on 18 March 2016.
Q What was the reason why she contacted you?

previous -- he had prostate cancer, Stage 4, metastasized to this point?

MS. AH LOY: Object to the form.

THE WITNESS: Yes, sir. But I need to explain.

Q (By Mr. Howe) Sure. Please do. Please do.

A I already had the result of the bone scan that showed no collapse of the spinal column. I also had results of a CAT scan that had been done just days prior to incarceration that showed no lytic lesions nor collapse of the spinal column.

When I examined Mr. Smith, he was completely functional and he complained of no leg weakness, he was ambulatory, fully walking and functioning.

Q So going -- and we'll get to that examination.

A Yes, sir.

Q The fact that he complained of back pain, though, and he had metastatic cancer of the spine --

A That would be expected.

Q Well, I know. Let me finish.

A Yes, sir.

Q -- would you at least agree that there was a warning sign that you needed to be on -- you definitely needed to monitor that?

A Absolutely.

MS. AH LOY: Object to the form.

Q (By Mr. Howe) No?
MS. AH LOY: You can answer.
A Yes.
Q (By Mr. Howe) But let me rephrase the question.
A Uh-huh.
Q Based on the fact that you knew about his previous metastatic cancer to the spine and based on the fact that he complained of back pain, would that cause you or did that cause you to monitor his condition while he was at the jail?
MS. AH LOY: Object to the form.
Go ahead.
Q (By Mr. Howe) Or how does that affect whether you monitor him and the degree of monitoring?
A We would already be done monitoring by the reception of the records.
Q But I'm not talking --
A And requesting to see him and being vigilant.
Q Well, we'll get to that.
A Okay.
Q I'm talking about after the 21st. Was there something that led you to believe, because of his serious condition, you needed to pay attention to this case?
MS. AH LOY: Object to the form.
You can answer. Sorry.

A Well -- well, certainly.
Q (By Mr. Howe) Okay. Is this -- I'm sorry. Is this funny?
A No.
Q Okay. Because this is -- there's a smile on your face.
MR. ARTUS: There's been a smile on his face throughout the whole deposition.
MR. HOWE: Well, is that an objection?
MR. ARTUS: Absolutely. I think you're --
MS. AH LOY: You're antagonizing the witness and harassing him.
MR. HOWE: No, I'm not antagonizing and I'm not harassing him.
THE WITNESS: Is this -- is this --
MR. HOWE: We're talking about something very serious now.
THE WITNESS: Is this relevant?
Q (By Mr. Howe) What I'm asking you is -- I'm not trying to antagonize you, but we're talking about something serious and there's -- there doesn't seem to be the same concern that I have about the situation, so --
A This is not appropriate, counselor.
MS. AH LOY: No, it's not.
THE WITNESS: It is -- it is -- it is -- it is

very inappropriate.
Q (By Mr. Howe) Okay. Well, I apologize. And I'm not trying to be rude, but this is a very serious matter, so maybe I just misread your body language.
A I am taking it very, very seriously.
Q Okay.
MS. AH LOY: And you're allowed to smile, because you're a nice person. You're allowed to continue to do that.
Q (By Mr. Howe) Yeah. I'm not saying you can't smile.
A This is absurd.
Q So let me ask you another question.
If I offended you, I apologize.
A Uh-huh.
Q Let's get back on track.
A I didn't get off track, sir.
Q No. I said I'd like to get back on track. Is that fair enough?
A That is fair enough.
Q Okay.
So after you reviewed -- and I'll take you to Number 12 -- TK12. So if you go back to your exhibits, that is after -- we're looking at the records from Dr. Eckenrode?
A Uh-huh.
Q You see here that Michael Smith -- there is a record

from Northeastern Health System that is February 24th --
A Yes.
Q -- 2016.
A (Nods head)
Q Is that the bone scan you are referring to?
A It is.
Q What about this bone scan was important to you in terms of the way you rendered treatment to Michael Smith?
MS. AH LOY: Object to --
Q (By Mr. Howe) -- at the time -- and let me ask you this: After you reviewed this record, did this -- did this affect the way that -- your opinion or your treatment of Michael Smith?
A Yes.
Q Okay. What about it and --
A Number one, it confirmed a Stage 4 cancer with a metastatic process, which is, by definition, a Stage 4, that it was not curable. And I was very sorry for that, because once it hits that point, there's no -- no cure. None.
Q Sure. Sure.
What else about this was important to you?
A That he had mets to the bone in several areas, that his time on earth was probably very limited.
Q What else about this scan was important to you in

terms of the -- your diagnosis and treatment of Mr. Smith, with the symptoms he was complaining of?

A Well, there's no real treatment for this. It is only, at that point, palliation.

Q What is palliation? I don't know what that is.

A Just to provide whatever can be to slow whatever progression of the disease possible. That is why I wrote the order that the family may bring a medication called Casodex to limit androgen, which feeds the cancer. And he assured me the family would bring it.

Q Do you know if the family brought it?

A I do not know.

Q Do you know if the family attempted to bring it and it wasn't --

A I do not know.

Q There was a period of time in which you followed up with Michael Smith after his March 21st exam, wasn't there?

A No.

Q You had one more exam?

A No.

Q You didn't have any more exams --

A No.

Q -- after March 21st?

A No. One time.

Q You only saw him one time?

A One time. Yeah.

Q Okay.

I'd like to turn your attention to -- we just looked at page 12 and page 13. Now what I'd like to do is I'd like to turn your attention to page 16.

What about this medical record was important to you, that you received on March 15th, 2016?

A It was very, very good because there were no evidence -- now, this is his chest X-ray.

Q Yes.

A Is that correct?

Q Yes, sir.

A There was no evidence of any pulmonary nodules, anything like that.

Q What is the significance of that?

A That it had not spread into the lungs.

My wife has lung cancer --

Q Okay.

A -- counselor.

Q Okay. I apologize --

A And that is something I take --

Q Or my sympathies are with you.

A -- very, very serious.

Q Okay.

A As I do all cancers.
Q Absolutely. I've been affected by cancer too.
A She also has colon cancer.
Q Okay. My family has been affected by that too. I definitely -- I share --
A I don't know that you do --
Q -- what you're going through.
A -- but that's fine.
Q So now what I'm going to ask you is, with respect to this record on 2/24/16, based on that, did that play an impact in your diagnosis or opinion as far as how to treat Smith?
A I was relieved.
Q Okay. You were relieved.
Would this play a role into whether it would cause him to have high blood pressure?
A We obtain chest X-rays for a number of different reasons, not only to assess for things like pneumonia, other changes pulmonary-wise, but we would also take a look -- it provides a picture of what we call the cardiac system, the heart, the vasculature. There was no evidence of any congestive heart failure or pulmonary vascular congestion.
But directly with blood pressure, no.
Q So this -- this wouldn't affect blood pressure one

way or another?
A No. No.
Q Would this -- what was his other complaint? He had --
A Back pain.
Q -- complaint of blood pressure, back pain?
A Yes.
Q And was there another symptom that you said?
A There was another --
Q Chest pain.
A -- of chest pain.
Q Chest pain.
Now what I'd like to do is I'd like to turn your attention to page 17 -- TK17, which follows.
Yeah. Sir, they're not in numerical order. It's actually --
MS. AH LOY: I think it might be after.
MR. HOWE: It's directly after that other NSU record regarding the chest X-ray.
MS. AH LOY: If I can quit fumbling around.
THE WITNESS: There we go.
Okay. I'm there.
Q (By Mr. Howe) This record here --
A Yes.
Q -- what is this record of?

Q (By Mr. Howe) Another patient that complains of back pain?

A Yes, sir.

Q And when we go to his blood count -- I'm going to take you back. I apologize. I know we're flipping -- I'll turn you to -- it might help if I flipped you to where we're going.

Let's see. We're looking for -- are these your documents or mine? I don't see -- do we have --

A I can locate it.

Q There you go. There you go.

MR. ARTUS: Is that TK17?

THE WITNESS: It is.

Q (By Mr. Howe) TK17 and 18, the complete blood count, when you look at this document, what does -- and this shows that this was ordered on March 14th, 2016; correct?

A Correct.

Q That's the -- would you agree with me that's the day before Michael Smith was taken into custody at the Muskogee County Jail?

A The day prior to incarceration.

Q So it would lead you to believe that he was still actually -- he was still appearing for doctors' appointments?

MS. AH LOY: Object to the form.

A This was in an emergency room.
Q (By Mr. Howe) Well, so he --
A No. This was in an ER.
Q It was an ER? Well, what was the purpose for him going to the ER?
A I don't know.
Q You would have --
A All I received was this as well as a CAT scan report.
Q Okay. And in this record, when you reviewed it, would you agree with me that this complete blood count, most, if not all, of his counts are not within the normal range?

MS. AH LOY: Object to the form.

Q (By Mr. Howe) Looking at this record --
A There are very minor changes that are not clinically significant.
Q Well, what are -- okay. Are there any major changes or major deviations from the normal range in this --
A Nothing that would alarm any medical provider.
Q And what are the minor deviations that are --
A A very mild dropoff in his RBCs --
Q Is that red blood cells?
A -- red blood cells, hemoglobin and hematocrit. But not even close to even being alarming or certainly

requiring any transfusion. Not even close.
Q So when you say a transfusion, are you talking about a blood transfusion?
A Yes.
Q So when -- in this case where you're talking about this record, is it your opinion that when you reviewed it that there was nothing alarming about it?
A That's correct.
Q In reviewing it, you said that there was minor issues that were significant -- or --
A No.
Q I didn't mean minor issues that were significant.
A No.
Q Other than being within the normal -- other than -- excuse me. I'm going to withdraw that question.
Was there anything about this record that you felt was important -- important in treating Michael Smith?
MS. AH LOY: Object to the form.
Q (By Mr. Howe) In this record, when you reviewed it --
A Well, any information is certainly important.
Q Sure. But what I'm talking about, was there anything in this record that you took into consideration in your medical opinion of treating -- or your medical opinion of Michael Smith?

A I was relieved that it was so good.

Q Okay. When you reviewed this record, did it affect in any way your treatment of Michael Smith?

A Yes.

Q How -- and I'm just saying, in terms of medically, not -- how did it affect your treatment?

A He did not require a blood transfusion.

Q Okay. So that's fair enough.

But would you agree with me that, just because somebody may not require a blood transfusion, that doesn't necessarily mean they're not suffering a serious medical need?

A Correct.

Q Okay. I now want to take you to -- if you go to past the CBC record, it is NHS or Tahlequah City, whatever they want to call it now -- and you go to page 14 -- sir, I'm going to turn you to it.

A Are we going to talk about the electrolytes here?

Q Do you have -- I don't know. I'm going to ask you because I don't know if this is significant or not.

So I've now got -- we're looking at TK14, which, again, is part of Exhibit 1.

A Yes, sir.

Q This is a record that is dated --

A 2/24/16.

Q So which was about three weeks before --
A Oh, no, no. I'm sorry. 3/14/16.
Q Okay. So the day before Michael was taken into custody.
A Exactly right.
Q Is this -- was your opinion -- this is also from when he went to the ER?
A Yes, sir.
Q And it looks here that this was transcribed at 3:00 in the morning?
A It would appear. Yes, sir.
Q When you looked at this record, what did you learn from it that was important --
A I was --
Q Hold on a minute.
A Okay.
Q -- that was important in your diagnosis or treatment of Mr. Smith while he was in the Muskogee County Jail?
A There were no lytic lesions identified, no evidence of any spinal cord collapse or compression. Really, really important.
Q Okay. Why is that important?
A Because later on he complained and developed paralysis. At this time, the day prior to incarceration, the CAT scan did not show anything significant that would

lead me or anyone else to believe that Mr. Smith was ultimately or imminently going to be paralyzed. I was relieved.

Q Sure. But at the time that you had this record on March 15th --

A Uh-huh.

Q -- Mr. Smith hadn't become paralyzed.

A Correct.

Q Just because he wasn't -- didn't show a spinal cord -- let's go this way. You saw a collapsing of the spinal cord or a collapse of the spinal cord? What did you say?

A Neither one.

Q Okay.

A Neither one was present.

Q Okay. On March 14th, if he is receiving treatment that shows there's no lytic lesions --

A No -- what treatment? There's no treatment.

Q I'm sorry. Radiology. I'm saying radiology --

A Yeah. Okay. There you go.

Q But -- yeah, that's -- I apologize. Thanks for fixing that.

In this record, towards the bottom, it says osseous structures, no lytic lesions identified. Was this --

A That is critical.

Q Also says sclerosis of the posterior T11 vertebral body is unchanged. What does that mean?

A Vertebral. There's some scarring.

Q What is the scarring caused by? Do you know?

A Probably the cancer.

And that was confirmed by way of the bone scan.

Q Because of this --

A But, again, no lytic lesions is important because that means no cancer has actively eroded through the spinal column.

Q Just because --

A Really important.

Q Sure.

And, Nurse Smith, just because it hasn't already eroded through the spinal column --

A Uh-huh.

Q -- it doesn't mean that it's not going to erode through the spinal column; correct?

A Correct.

Q Would you agree with me that if somebody has this type of cancer and they're suffering back pain, that that's a symptom that could suggest that they're -- that the spinal collapse could erode at a later date?

A Potentially, yes.

Q And they could actually be in the early stages of

doing that when they suffer back pain; right?

MS. AH LOY: Object to the form.

Q (By Mr. Howe) In Michael Smith's condition, the fact that his spinal column wasn't -- you said eroding --

A On the date prior to incarceration.

Q -- on the date prior to incarceration --

A Yes.

Q -- the fact that he was having back pain while he was incarcerated, couldn't that also be that, just because it wasn't eroding, that there were early signs that it was starting to erode?

A It's possible. But on the date that I saw him on the 21st, there was no functional loss.

Q Okay. On the day that you saw him on the 21st, though, he was complaining of back pain.

A But no functional loss.

In fact, I was surprised the nature of his complaints, because his primary complaint was not the back pain.

Q What are early signs that somebody in Michael Smith's medical condition, with Stage 4 metastatic cancer to the spine --

A Yes.

Q -- is suffering early signs of a cord compression? What do you look for?

considering the fact that he suffered a cord compression?
A Yes. And the fact that he made no complaint of it on the 21st.
Q That's -- sir, that's -- that's what you say. But he's already testified and he has already --
A He was under the influence of potent narcotics when that testimony was taken.
Q He also gave a five-hour deposition.
A And you had to keep awakening him and redirecting him.
Q Sir, if you'd like to -- did you have a chance to -- well, have you had -- in preparing for your deposition today, what did you do to prepare or review? What did you review?
A I reviewed all records here.
Q Did you review anything else?
A No. All the records in front of me right here.
Q Okay. Did you have an opportunity to watch the deposition of Michael Smith that's videoed?
A Video, no.
Q So you're just speculating?
A On -- no.
Q Sir?
A No. It's in the transcript.
Q What I'm asking you is: You're speculating on

whether Michael Smith was lucid or coherent enough to provide deposition testimony?

MS. AH LOY: Object to the form.

Q (By Mr. Howe) Because you haven't seen the video.

A Under the influence of the narcotics he was on, he was not even competent to sign any legal document nor medical consent.

Q But he was competent to provide a five-hour deposition and answer my questions, her questions, and his questions.

MR. ARTUS: That's yet to be decided, Counselor.

MS. AH LOY: Uh-huh. And I object.

MR. HOWE: I'm just saying, I think we're --

THE WITNESS: He would not have been competent to drive, he would not have been competent to give medical consent for any procedure.

Q (By Mr. Howe) Well, he would have been competent to write a will.

MS. AH LOY: Object to the form.

Q (By Mr. Howe) Do you disagree that he was of sound mind on that day?

A I don't know.

Q Have you read his almost 200-page deposition that you believe he wasn't coherent enough for?

Q What is significant?
A His blood pressure is exceeding the accepted values both on the systolic end and the diastolic end.
Q As a result of that, what does that mean?
Well, let me ask you this: Does that show that he's suffering a serious medical condition?
A Yes.
Q As a result of that medical condition, does that require that he be taken to the hospital?
A No.
Q Why?
A It is controllable on an outpatient level.
Q He'd been in custody since March 15th; correct?
A Correct.
Q And by March 18th he was still suffering from high blood pressure.
A Well, sir, he was suffering from high blood pressure even long before.
Q Right.
A It was accelerated blood pressure at this time, exceeding the accepted values.
Q So was his blood pressure getting worse or better in your opinion?
A Well, at that point --
Q On March -- 15th of March.

A -- it was at this point in which intervention was provided.

Q So you believe that the way you treat that, you just give him blood pressure medicine?

A Yes.

Q What is clonidine used for?

A It is an antihypertensive.

Q Okay. Is it used for anything else?

A We use it sometimes in children for ADHD.

Q Is it used for anything else?

A Sometimes we use a variation of it psychiatrically --

Q Okay.

A -- to help impulsivity.

Q Anything else --

A Not that I can think of.

Q -- you prescribe it for?

A Well, sometimes for vasomotor symptoms associated with menopause.

Q Okay. Can you think of any other reason?

A Not really.

Q In this case, is the reason -- why do you believe Michael Smith was prescribed the clonidine?

A For his accelerated hypertension.

Q On this same record, if you go down, it says

Q So that's not you?
A No.
Q Okay. And what is lisinopril for?
A It is an ACE inhibitor class medication for hypertension.
Q So blood pressure?
A Blood pressure.
Q Is it used for anything else?
A It is. It is used also to protect the kidneys from what we refer to as nephropathy in people who are diabetic.
Q Anything else it's used for?
A Not that I'm aware of.
Q Okay. What about -- will you say this word, metoprolol?
A Metoprolol.
Q Metoprolol.
A Yes.
Q Okay.
A The other name is Lopressor.
Q All right. It says here that Michael Smith was prescribed 25 milligrams twice a day for 60 days. What do you prescribe -- you can say it. What's that word?
A Metoprolol.
Q Metoprolol.

A Uh-huh.
Q Okay. What do you prescribe metoprolol for?
A For either accelerated heart rate and/or blood pressure or if a person has congestive heart failure. It too has many reasons for prescription.
Q And you didn't prescribe that; correct?
A Yes.
Q That's not your initials?
A Yes.
Q Oh. That is your initials?
A Yes. All of these are my orders, just not my initials.
Q Oh, well -- but you -- so you are the one who actually did prescribe the lisinopril?
A Yes.
Q Okay. So are those -- next to -- let's go back to the lisinopril --
A Sure.
Q -- where it says 60 days and then it says -- what is that writing there?
A Which writing?
Q It almost looks like an M.M.
A That's what it appears to me.
Q Okay. But that's not yours?
A No.

Q Okay. But you are the one that -- you're the one with the prescribing authority?
A Yes.
Q Gotcha.
And you were also the one with the prescribing authority for the metoprolol?
A Metoprolol, yes, sir.
Q And then also again for the clonidine?
A Exactly right.
Q As needed.
And then it also states 160/100.
A Uh-huh.
Q Is that a record, when you read this, that's referring to blood pressure?
A It is.
Q Is 160/100 a serious medical condition?
A Potentially.
Q What would make it more serious? You say potentially. You qualified that answer.
A Well, not really.
Rephrase the question, please.
Q Sure. In your opinion, is blood pressure 160/100 a serious medical condition for a patient?
A Yes.
Q And then you -- so you say you also were the one who

prescribed the clonidine; correct?
A Yes, sir.
Q Okay. What was that for? The high blood pressure we just said, right?
A Yes.
Q Or blood pressure medicine?
MR. ARTUS: Hypertension is what he said.
MR. HOWE: Okay.
Q (By Mr. Howe) Hypertension is low or high blood pressure?
A High.
Q And hypotension is low blood pressure; right?
A Hypotension is low blood pressure.
Q Okay. And then hyper is high blood pressure?
A Yes, sir.
Q Number 4, it says ibuprofen, 400 milligrams twice a day for 60 days. You prescribed that also, correct?
A I did.
Q What was the reason for that prescription?
A For his complaint of pain.
Q Pain where?
A In his back.
Q So 400 -- okay. Then it also says, number 5, BPVS. Will you please tell me what BPVS means?
A Blood pressure checks.

Q Okay. Blood pressure checks.

A Uh-huh.

Q And then it says twice a day and record.

A Yes.

Q What is the reason why you ordered blood pressure checks twice a day to record it?

A His blood pressure was elevated.

Q So it led you to believe that that was a serious medical condition that needed to be monitored and checked twice a day; right?

A Correct.

Q Then you've also got -- is it -- is it tamsulosin?

A Yes.

Q Got one right.

It says .4 milligrams. What does that say? I can't read that writing.

A 0.4 milligrams PO -- in other words, by mouth -- Q day times 60 days. Which was a medication he had been maintained on by his urologist as well as his oncologist.

Q Sure.

And I apologize. I didn't hear you when you said. How often was he supposed to take that?

A He was supposed to take it one time a day.

Q Okay. One time a day.

A Yes, sir.

Q Okay. I could read most of that.

And then that was for 60 days. And did you prescribe that too?

A I did.

Q Okay. Then what does -- you said it was prescribed by the urologist or oncologist? What does that treat?

A It's a -- it treats a condition referred to as benign prostatic hyperplasia.

Q What is that?

A Not to be confused with prostate cancer.

When we men of a certain age -- get to a certain age, oftentimes our prostates enlarge.

Q Sure.

A And this is a medication designed to shrink that gland to prevent what we refer to as obstructive uropathy, to help him void.

Q Basically to help him pee?

A Yes. By shrinking --

Q Not to block the urethra so he can actually pee?

A Exactly right. Exactly right, sir.

Q Okay. Or urinate.

A Yes.

Q So the fact that he had prostate cancer, that also contributes to an enlarged prostate, right?

A Not necessarily.

Q Or does it?
A No. No.
Q What about in Michael's case? What did your --
A No. No. I would say separate.
Q So did he tell you that he was having trouble urinating?
A No.
Q Did you just --
A But it was part of his -- on his records from here that we felt was going to be important to maintain safety and comfort.
Q So the reason why you said that is -- or the reason why you prescribe many of these, is it because they were his -- the medications that you learned about when you reviewed his medical records?
A Yes.
Q So you were just making sure those prescriptions were accurate, correct?
A Yes. And then to complete the process, when I physically visited with him on the 21st, for instance, on Casodex.
Q And then we have Michael Smith here, correct?
A Yes, sir.
Q Is that your initials at the bottom there?
A No. Not my initials, my signature.

the medications. And we already went over these; correct?

A Yes, sir.

Q And then it says BPV, which is blood pressure checks.

A Yes.

Q Okay. So that doesn't say BPVs. That says BP checks?

A Yes, sir.

Q Like a checkmark?

A Yes.

Q Okay. That's helpful.

And then it says BD, which is bi-daily or twice daily, until stable; correct?

A Correct.

Q In your review of Michael Smith's records related to the time -- from the time he became a patient at the jail until the time that he was released, was there a point at which his pressure ever -- his blood pressure ever stabilized?

A At the time I saw him -- the one point that I saw him on the 21st, it was still very elevated, so I added another -- a third medication called amlodipine.

Q Right.

A Which is also known as Norvasc. Because at that

at that time there was a large turnover during that transition.

Q So do you think the transition played a role in the structure and the way the things -- the way the operations were?

A Just in that main movement. Not in Turn -- in fact, Turn Key, when they came in, they came in with a set of really good policies, really good procedures.

From what I could tell -- and again, keep in mind I was only there a month -- probably very good people.

Q How would you describe the policies and the procedures that Turn Key had in place when you ended your employment on March 5th of 2016 compared to now, when you came back in January of 2018 under the new -- basically with Rob Frazier as sheriff?

A Very comprehensive, both, and I was very, very pleased.

Q So when you say "very comprehensive, both" --

A Uh-huh.

Q -- to make sure I and the jury understand you, you're saying that the jail, in January 2018, has a -- you feel a more -- you feel it has a comprehensive policy; correct?

A Oh, yes. Oh, yes.

Q And you feel that Turn Key has a comprehensive

policy?
A Oh, yes.
Q Do you feel that the jail, prior to January 2018 and before Turn Key took over, had a comprehensive policy?
A Not as comprehensive as what Turn Key initiated and that is present now.
Q What is more comprehensive? What do you mean by that?
A Well, you would not believe the number of policies that is -- that are present for virtually every contingency.

And I suspect Allie could speak to that in terms of providing some of the policies --
Q Don't worry. Allie's not in the hot seat. We're not going to take her deposition.

What I'm saying is, are you saying -- and I guess what we'll go back to is maybe patient care. What is more comprehensive or what was less comprehensive?
A I believe the staff is more protected and I believe the patients are better served with the immediacy of the care.
Q When you say the staff is better protected --
A Yes.
Q -- what does that mean?
A The policies and procedures protect the providers,

Q Do you recall what he told you? What do you say he told you?

And I'm just saying -- and I don't -- I'm not straying you from your notes.

A Oh, no, no, no, no, no.

Q You're more than welcome to look at your notes to refresh. I just

A But it's better, just to speed --

Q Yeah. If you can think first, what do you recall about him?

A Yeah. His first complaint was his cancer, and he felt that possibly we had the wrong records.

Q What was his complaint about his cancer?

A That he had been diagnosed with prostate cancer and that he was under the care of Dr. Eckenrode, and I reassured him we had those records, and was under the care of Dr. Gaillich, and I assured him we had those records as well.

Q What was his concern about his cancer while he was in jail, though? Not necessarily the records. What was his concern about?

A That he would not --

Q -- any symptoms or conditions his cancer was causing?

A That he would not be able to continue to receive

care.

And I assured him that those medicines would be continued even in an incarcerated state.

Q When Michael Smith was examined by you, what else did he tell you about his cancer?

A Directly with the cancer, that was it.

Q What were his complaints to you?

A His complaint were back pain, which I would have anticipated.

Q Why would you have anticipated that?

A Because oftentimes, obviously, with a metastatic situation, you know, certainly with the back, after having certainly reviewed the imaging and Dr. Eckenrode's reports, that would have been concerning. And I went over those records with him.

Q Did he tell you that he felt that something was wrong with him?

A No.

Q Did he tell you that he thought that --

A Well, wrong with him, that's --

Q Yeah. Let me fix that. Did he tell you that he felt that something was -- like something was seriously wrong with his body?

A No.

Q Did he ask you to go to a hospital?

A No.

I expected that and I was surprised he did not bring it up. Because oftentimes, you know, many people will -- you know, certainly in a situation like Michael's. You know, he did indicate he had prostate cancer with mets to the bone -- metastatic situation to the bone.

Q And what circumstances with the jail -- let me rephrase my question.

When the jail takes patients to the hospital, that costs the jail money; right?

A Not necessarily. No, no.

Q The jail foots the bill.

A No. No. That's not true.

Q Who foots the bill?

A If there's a preexisting condition, the patient himself or herself is responsible for it.

Q Were you aware that Michael Smith actually had government health insurance?

A We do not inquire. It does not matter.

Q Were you --

A Because in an incarcerated state, the VA does not recognize your veteran status; the Indian tribes do not recognize your Indian status; Medicare does not recognize your insured status.

Q What is the reason -- I'll withdraw that question.

state 3/21/18?
A It does -- '16.
Q Oh, I apologize. 3/21/16.
What does that say next to where it says allergies?
A Morphine sulfate.
Q Then below that there's an arrow BP. What does that stand for?
A Elevated blood pressure.
Q Then it also states -- what is that under elevated blood pressure?
A Back pain.
Q And then where it says HPI, that's -- is that history and physical? What does HPI stand for?
A HPI, history of present illness.
Q Yeah. Present illness?
A Uh-huh.
Q What is your writing there?
A History of prostate cancer with mets to the bone, not under any active treatment except hormonal injections every six months, due next June.
Q With respect to where it says not under active treatment, if -- what would he have had to do in order to be under active treatment?
A It's not possible with a Stage 4.
Q So when you're saying under active treatment, you're

just saying because it's not curable?
A It's not curable.
Q But you're not saying that he wasn't going to the doctor and still being treated for cancer-related issues?
A He was receiving hormonal treatment with injection and orally with the Casodex.
Q Also -- but he also, the day before he was brought to the Muskogee County Jail, he had also had a complete blood count?
A Correct.
Q That would be a form of treatment, lab work.
A No. No. No.
Q But that's --
A It's a form of evaluation.
Q Okay. And radiology?
A Labs don't treat. Imaging doesn't treat.
Q He was still having medical examinations related to his previous cancer history. Is that fair to say -- or isn't that fair to say?
A Yes.
Q And he was in the jail in April and his next injection wasn't scheduled until --
A Until June.
Q Well, it was due next for May.
A Okay. Okay.

Q Would that surprise you? So that would be less than a month from the day he was released? Would have been April --

A Which was actually a different injection than the lupon.

Q It was leuprolide acetate.

A Yes. Okay.

Q But what I'm saying, though, is he was still receiving that injection he was supposed to get every six months and he was supposed to get another one that month; right?

MS. AH LOY: Object to the form, in that month.

MR. HOWE: Sure.

Q (By Mr. Howe) When I say "that month," I'm saying he was due in May --

A Not for lupon.

Q But what -- do you recall what he was due for?

A Yeah. It's embedded here somewhere in Dr. Eckenrode's records.

Q Okay.

A It was a second androgenic inhibitor.

Q I have leuprolide acetate due every six months, and it looks like his current -- if you go to the very first page of the -- second page of those documents I initially gave you from Dr. Eckenrode --

A Here we go. Trelstar.
Q Where are you looking at?
A Right here. (Indicating)
Q Okay. This is current outpatient prescriptions; correct? So where you're saying Trelstar, it says -- according to this, when was he due for it again?
A Yeah. In May.
Q Right.
A Yeah. You're confusing the two. But that's okay.
Q Well, no. And that's what -- you're the doctor -- I mean the nurse --
A No. Nurse practitioner.
Q I gotcha. I caught myself that time.
You're the first nurse practitioner I've ever deposed. I'm used to doctors so --
A That's okay.
Q -- I continue to do that.
A That's okay.
Q But if I take you back to TK007 --
A Uh-huh.
Q -- it says that current facility administered medication and says leuprolide acetate, six-month kit, 45 milligrams, and that was on 12/10/15.
A Uh-huh.
Q So are you saying that -- is it your testimony that

he was now supposed to get Trelstar?
A No, no. He gets both.
Q He gets both.
A He gets two injections and an oral pill.
Q What is the first injection for, the leuprolide --
A They're both -- they're both -- one is designed to prevent the production of the male hormone. The other is to block at the receptor site the male hormone that feeds the cancer.
Q So they're cancer related?
A Yes. It is -- I hate to say it, but it's a chemical castration. It's the only way we have of managing it at this stage.
Q So when you say a chemical castration, to make sure I understand, what does that mean and what does that cause?
A It causes -- it's actually -- the lupon is a female hormone.
Q When you say castration --
A Yes.
Q -- I'm saying -- in your term -- when I think of castration, I think of something else. So when you're saying castration, I want to make sure I -- I don't think it causes that, so --
MS. AH LOY: He said chemical castration, to be

fair.
Q (By Mr. Howe) Right. So we're -- yeah. That's what I'm saying. So a chemical castration.
A It changes the level of the hormones in the body, making less of the male hormone available that would feed the cancer and make the cancer progress faster.
Q How does that affect one's body, though, by having that? Why is it so sad?
A You would become a little more feminized.
Q Oh, okay. So maybe you might have a softer voice --
A Yes.
Q -- or you might develop male breasts or --
A Yes.
Q -- some -- okay.
A Yeah.
Q I follow you.
A Yeah.
Q Now that makes sense to me.
When you said castration, I've never heard the term "chemical castration."
A The regimen is a legitimate regimen, it's a neutral regimen, but it was apparent that Mr. Smith was in his last stages and there was just -- essentially, you know, probably should have been offered hospice.
Q Smith should have been offered hospice?

A I believe so.
Q If he was in a condition to where he should have been offered hospice when he's in the jail for this period and he's suffering these serious medical conditions we've already discussed, isn't there a possibility -- or wouldn't that be more likely to warrant that he be -- if he asked to go to a hospital, that he be sent to a hospital?
A No. No. In fact, a hospice patient would be turned away.
Q In Michael Smith's condition, if he says that he wanted to go to -- or requested to go to the hospital because he felt that he needed emergency medical care for what he was going through, in that situation, would you order it?
A If there was an indication. If there was an indication. Not just on say-so.
Q I understand. But what's the indication? What do you need in order to say -- you're asking to go to the hospital, I'm going to send you to the hospital, and what is the indication --
A And many of the patients don't even ask it, but if their blood pressure, for instance, is extraordinarily high and we cannot get it down or they're having intractable chest pain or intractable nausea and vomiting

or the worst headache of their life.

Q But Stage 4 metastatic cancer to the spine with severe back pain and then a history of -- and then also in the record numbness of feet, that doesn't warrant going to the hospital?

A There's no treatment for it, no cure for it.

Q I'm not talking about --

A And that's the unfortunate part and I hate it.

Q What about -- but in this case, Mr. Smith suffered a cord compression. He says that when he was suffering back pain and these issues, he testified that he asked and begged to go to the hospital.

A I have no record of that.

Q In that condition, if he had asked you to go to the hospital and you were the final decision-maker, would you have approved his request to go to the hospital?

A Only if there was demonstrable objective findings.

Q And that is fair.

A Uh-huh.

Q And then on your prescription orders -- I apologize for flipping around.

A I know. That's --

Q I want to take you back to TK20, which is your record.

Is there anything significant in -- from where it

says -- does that say pulse, 96?
A That is not significant.
Q No. Okay. But I'm saying is that what that says, your writing?
A No. That's actually a pulse-ox. That is his oxygen level.
Q Okay. What does that measure? What is the importance of that?
A To make sure that he's getting good air exchange.
Q Does that -- at that level, is he getting good air exchange?
A He certainly is. Yes, sir.
Q And where it says BP, that's blood pressure; right?
A Yes, sir.
Q 152 -- what does that say?
A 152/98.
Q Is that high blood pressure, low blood pressure, within the normal range?
A Oh, no. It's high. It's exceeding the national standard, the treatment standard, the target of 130/80. That's elevated.
Q Abnormal?
A Abnormal.
Q Dangerous?
A No.

Q Somewhere between abnormal and dangerous?
A Yes. Longterm, yes.
Q All right. When you say longterm, what do you mean? What is the duration of longterm?
A It depends on co-morbidities. If a person has, say, renal dysfunction or is a cardiac patient, it would be way too high. But to the best of my knowledge, he was neither one of those.
Q Heart rate, is that -- HR, is that heart rate?
A It is heart rate. Yes, sir.
Q 53?
A 53.
Q Is that --
A Fantastic. Because that lets me know that one of his other medications was working, the metoprolol. We use metoprolol not only for blood pressure, but also to take the workload of the heart to get it to relax somewhat. It's wonderful.
Q Going down where it says general, NADAAOX4, well-nourished. Just in laymen's terms, explain to me what you're saying there.
A Normal.
Q What's normal?
A His appearance, his interaction, his --
MS. AH LOY: I think he -- I'm sorry to

interrupt.

THE WITNESS: Yeah.

MS. AH LOY: I think he might be wanting you to explain what the initials stand for.

THE WITNESS: Oh, I'm so sorry.

MS. AH LOY: Is that what you meant?

MR. HOWE: Yeah. Yes.

THE WITNESS: No acute distress, alert and oriented times 4 and well-nourished.

I know in medicine we use a lot --

MR. HOWE: Yeah.

Q (By Mr. Howe) And then with no acute distress, what would somebody who's in acute distress, what symptoms would they show? Visible symptoms or --

A Well, it depends on so many -- so many different things. Sometimes if it's pain and grimacing or moving very slowly, what we call antalgic or painfully. It could be tearful, very dysphoric, because we see a lot of mental health patients as well. Clutching at chest.

Q Alert -- and then you said alert and oriented times four?

A Yes, sir.

Q Explain to me and the jury what that means.

A That means interacting normally, alert and oriented times four, to person, place, time, and situation. In

other words, he was in his right mind.
Q And well-nourished means that he looked like he was eating --
A Yes.
Q -- wasn't malnourished?
A He was not malnourished, did not appear -- did not appear what we call cachectic or cachexic, you know, kind of, you know, wanting for anything.
Q What visible symptoms would somebody have or -- yeah. Basically, what visible symptoms would you see in somebody who is malnourished?
A Disruption in the integrity of the skin, the integumentary system.
Q What does that -- like what would that be? Like skin color, jaundice, something like that?
A Not necessarily jaundiced, but just wasted, where they don't have a lot of what we call adiposity, where it's just muscle or loose skin.
Q Okay.
A In very, very serious cases, there can be changes even in the scalp and in the hair.
Q Right. Alopecia?
A Yes. Yes.
Q Then it says -- as we go down, it says heart RRR. What does that mean?

A Regular rate and rhythm.
Q So his heart was functioning --
A It was.
Q -- according to you, fine.
A Yes, sir.
Q And then lungs CTA?
A Clear to auscultation.
Q Then it says that -- then down here it says assessment. Tell me what that writing says.
A Prostate cancer with mets to the bone.
I did not do well in penmanship. I am so sorry.
Q Lawyers and doctors flop on penmanship.
MS. AH LOY: It's not the worst I've seen.
Q (By Mr. Howe) Thank goodness for keyboards. Really.
A And then below that is the abbreviation for hypertension.
Q Okay. So he was still suffering from hypertension?
A Yes.
Q And then you have -- tell me what number 1 is.
A And that's amlodipine, 10 milligrams, one PO took by mouth, daily.
The other name for amlodipine is Norvasc. It's a calcium channel blocker; in fact, the number one prescribed anti-hypertensive in the world.
And then -- I'm sorry.

Q Did you -- so did you supply or provide that for the high blood pressure?

A Yes, sir, I did.

Q Prescribed it?

A Yes.

Q And then number 2, what's that say?

A Family may bring Casodex, 50 milligrams, one by mouth BID or two times a day.

Q Casodex is for what?

A It is also, in his case, for cancer. We use it to treat other things had like endometriosis in women.

Q Sure.

A Although we have better treatment now.

Q Is it a necessary -- and if somebody not getting their Casodex or not getting their Casodex and they have cancer, what is the risk?

A It could cause an acceleration.

Q Well --

A In Mr. Smith's case, it was probably too late, but you have to try it. And I believe that's what Dr. Eckenrode and Dr. Gaillich were attempting to do.

Q So getting that Casodex would have been important for Mr. Smith?

MS. AH LOY: Object to the form.

Q (By Mr. Howe) Or let me ask -- I'll rephrase it.

The fact that Mr. Smith had a prescription for Casodex, would it be important for him to get his Casodex?

A Not short term. Longterm, it would have been, because he was still covered with the two injectable agents.

Q Even though he had the injectable agents, would he still be better off with the Casodex?

A Probably not.

Q So why would it be important for the family to bring it if it's not, in your --

A I wanted to --

Q Hold on a minute.

A Okay.

Q -- if in your opinion it's not really important?

A I wanted to try to replicate, to the best of my ability, his treatment regimen that he was receiving outside as in an incarcerated state.

Q So you believed, in your opinion, that he should be able to have his Casodex and should get it?

A Well, yes. But I did not regard it as medically critical. And I hate that. I --

Q Why do you hate that?

A I hate cancer. I despise cancer.

Q Why did you not regard it as medically critical,

though?
A Because --
Q Why do you hate the -- that's what I'm trying to get at.
A His condition was beyond what Casodex or anything else could have helped.
Q Are you aware that he actually lived for another year and a half after he was released?
A I believe it. With his type of cancer.
Q I'm just saying are you aware of that?
A No.
At the time he was diagnosed in 2012, he had a 29 percent chance of survivability of surviving five years. 29 percent.
Q Uh-huh.
A At the time -- at the point he was seen in 2016, he had a 1 percent chance of surviving one year.
Q Uh-huh.
A He did good. He did good.
Q He was also -- you're aware he was also paralyzed --
A That's what I understand, yes.
Q -- during that last year and a half of his life?
A Yes.
Q That's tragic, isn't it?
A It is. It's horrible. That's --

Q Where it says Number 3, DC ibuprofen when meloxicam --

A Is available.

Q What does DC mean, again?

A Oh. Discontinue.

Q Discontinue ibuprofen.

A Yes, sir. Yes, sir.

Q So were you saying that if meloxicam is available, give him the meloxicam?

A When I noted the records from Dr. Gaillich and certainly Dr. Eckenrode, the meloxicam had been prescribed by, most recently, Dr. Eckenrode. Again, I wanted to replicate his medication profile. And until we got the meloxicam, I had provided ibuprofen --

Q Uh-huh.

A -- just until the meloxicam came in --

Q So what is the -- I didn't mean to interrupt you. The meloxicam, what is that prescribed for, to treat?

A It's a potent nonsteroidal anti-inflammatory for pain.

Q Treats bone and joint pain?

A Oh, yes, it does. Yes, sir.

Q Arthritis?

A Yes, sir.

Q And then the meloxicam --

A Yes.
Q -- it says -- what does Number 4 say, meloxicam --
A 15 milligrams, one PO Q day, family may bring.

Because Mr. Smith assured me his family and -- well, he had enough that the family could bring from home.

And the meloxicam, I had -- you know, the 15 milligrams is a maximum dosage. I wanted to maximize every opportunity for pain control, because I knew that would be an issue.

Q Looking back on it, when we're talking about Mr. Smith, even when he was a patient of yours, you viewed it as -- did you view it as a grim situation?
A Oh, yes.
Q Being that it was a grim situation, if he requested to go to the hospital, would it -- would that play --
A If --
Q Hold on.

-- would that play into your decision of whether to approve that or not?
A Approve what?
Q The fact that you say he was a grim situation, you felt from your compassionate -- if he says he has to go to the hospital, whether it's through you or somebody else, would that make you more likely to approve that order so he could go to the hospital and get the help

that he felt he needed, the emergency help?
A No. I used to work the emergency room and so I am very aware of admitting patients at the emergency room, and he likely would have been turned around at that time and sent back.
Q On March 21st?
A Yes. Yes.
The emergency room does a really good job of life-saving situations, limb life-saving situations, but in terms of essentially hospice care, no. They may have prescribed a pain medicine and sent him back.
Q Well, four days later -- if you turn to the next page, where it says TK05. This is a note by -- I believe it's Cindy Bilyeu.
Are you able to find it?
A I'll find it here.
Q Here, this one --
A There. Got it.
Q Okay. Did you find it?
A Yes, sir.
Q All right. This is a note by Cindy Bilyeu on March 25th, 2016, says patient brought to medical stating his legs and feet are numb.
The fact that he's now complaining that his legs and feet are numb, does that demonstrate to you early signs

in a minute.

March 28th, 2016, the next record, TK03, it says, name, Michael Smith. That's referring to my client or -- not to you, but, of course, the patient.

Where it says 3/28/16, this is a record by Loretta -- or I'm sorry.

MR. HOWE: Is this Dorothy Lynn Lee?

MS. AH LOY: Doretha --

MR. HOWE: Doretha.

MS. AH LOY: -- Lynn Lee.

MR. HOWE: I've been wanting to get that right. Doretha.

Q (By Mr. Howe) This record shows that -- it says inmate -- we like the word "patient" -- states that his legs are not working.

MS. AH LOY: Object to the form in that you read in language that is not contained in there.

MR. HOWE: I just said -- okay. That's fine.

Q (By Mr. Howe) It states that his legs are not working and he has fallen several times.

Is that important to you?

A I believe it is, yes, sir.

Q That's a serious medical condition, isn't it?

A It is, potentially, yes.

Q Especially when it's -- but then it says no signs of

Q Do you -- rephrase.

While you were treating Michael Smith, do you know if there was a file where all his records were kept? I guess -- would it be a medical chart?

A There would be a medical chart. Yes, sir.

Q Where would that have been kept?

A It would have been kept in the medical section, which adjoins the exam room.

Q Which any of the --

A It's kind of an administrative area with the computers and the files and the medicines and then an exam room that adjoins it.

Q Which any of the nurses or medical staff --

A Would have access to, yes, sir. Yes.

Q Did you ever have any conversations, other than the ones we talked about, with Cindy Bilyeu, Amity Lee -- or I'm sorry -- Amity Williams or Doretha Lynn Lee, about Michael Smith?

A Other than what I've disclosed already, not that I recall, Counsel, no.

MR. HOWE: Give me one second.

Q (By Mr. Howe) Did you ever tell Michael Smith that he didn't have cancer anymore?

A Oh, no.

Q Based on what you know, is that a true or a false

statement?
A Oh. Oh, it's a true statement. I never told him he never had cancer.
Q Right. But if --
A Oh, my gosh.
Q In the event some -- if anyone -- if any of the deputies or the jail staff or Turn Key ever told Michael Smith that he didn't have cancer anymore, would you agree or disagree with that?
A Oh, I would disagree with that. Oh, my.
Q Were you ever notified that Michael Smith had passed out when he was booked in?
A No.
Q Were you ever notified that that -- of any of the prior treatment that he had other than what he was in the records prior to your examination of him on March 21st?
A No. That's why the record was so valuable even prior to my visit. It became a really valuable visit.
I don't like to guess. You can't guess. When you're a carpenter, you can get a new board, but with a human being, you can't get a new human.
Q Are you familiar with the effect on a patient's bowels when they suffer a cord compression?
A Yes.
Q Can you explain to me what occurs?

Q I'm going to jump around.
A That's okay.
Q Were you ever aware of any instant of Michael Smith having passed out before you saw him?
A No.
Q Did you ever personally observe Michael Smith pass out?
A No.
Q Did anyone report to you that Michael Smith had passed out?
A No.
Q I just want to make --
A That would have changed the complexion.
Q Okay. And I just want to make sure -- we didn't go through your medical history, but I just want to make sure the record is clear. You're not a medical doctor; correct?
A Correct. I am a nurse practitioner. That's right.
Q Let's see here. Did you ever review the actual radiology films --
A No.
Q -- of Michael Smith?
A Because I am not a trained radiologist, I depend on someone who has dedicated their life, their profession to reading the films.

Q So is all you would have had the actual report?
A Which is much more valuable.
Q Do you believe, in your professional opinion, that Michael Smith developed prostate cancer during his 18-day incarceration at Muskogee County Jail?
A Oh, no. It was in 2011 it was formally diagnosed. And I hate that. There would have been a window for opportunity for treatment and possibly cure within probably the first year. But at the time we saw him, there was virtually no possibility of anything positive in terms of curability or in terms of improving the quality of life.
Q Do you believe, in your professional opinion, that Michael Smith's prostate cancer metastasized further during his 18-day incarceration --
A Absolutely not.
Q -- at Muskogee County Jail?
A It is a very slow-growing tumor that is well established.
Q Did you ever believe, while Michael Smith was under your care, that he was suffering from a serious medical need that was not already being treated?
A As far as I can determine, the staff was very responsive.
Q Did you ever refuse to provide care to Michael

Smith?

A Oh. Never. By common sense and profession, both spiritually and professionally, I would have done whatever would have needed to be done.

Q Do you believe any other Turn Key providers refused to provide care to Michael Smith?

MR. HOWE: Objection. Calls for speculation.

Q (By Ms. Ah Loy) Do you have any reason to believe that any other Turn Key provider refused to provide care to Michael Smith?

A No. That would have been grounds for immediate dismissal and loss of license.

Q Did Turn Key have any policies or procedures that told providers to deny care to patients?

A No. In fact, we have adopted Turn Key policies and procedures at the current time, even though Turn Key is not the medical provider. They are that strong.

Q If you go to TK4 -- it's one of the pages that he gave you -- there was a little bit that I think needs to be clarified for the record and I just wanted to take you to it, because I think there was a little confusing testimony earlier.

I'm looking for the right page. The orders. Where are your orders?

There. Okay. So TK19 is what I'm looking at.

Earlier, counsel was questioning you about the second entry on 3/18/16, the clonidine order?
A Yes.
Q Okay. Can you --
A Number 3. Yes.
Q And specifically, he mentioned the blood pressure of 160/100.
I just want you to explain what -- what is that --
A What that is, that's what we refer to as a PRN order. In other words, it is not routine. That if Mr. Smith's blood pressure exceeds 160 on the top, systolic, or more than 100 at the bottom, that gives the staff the ability to treat on the spot.
Q Okay.
A While we're not delaying care.
Q So that's not a blood pressure that Mr. Smith actually had?
A Oh, no, no, no. No. Not at all. Not at all. No.
MR. HOWE: So, Allie, to clarify, where we say BP, is that like a greater-than sign?
MS. AH LOY: Yes, that is --
THE WITNESS: Yes.
MS. AH LOY: -- a greater-than sign.
MR. HOWE: Okay.
MS. AH LOY: That's what I was trying to clear

up. Sorry.

MR. HOWE: Sure. Yes.

Q (By Ms. Ah Loy) When you personally spoke with Michael Smith, did he give you any idea of when he thought he was going to be released from jail?

A I will never inquire the nature of a patient's charges, but oftentimes I will inquire how long do you expect to be with us. And he did not give any indication.

Q Earlier, when counsel was questioning you, you described a grim situation regarding Mr. Smith?

A Yes.

Q What did you mean by grim situation? Were you talking about his prognosis or his clinical presentation?

A Prognosis. When I received the records on the 15th, it was apparent to me he was already at a Stage 4, already had the metastatic situation into his musculoskeletal system.

Q Do you think, in your professional medical opinion, that if Michael Smith had been transferred to a hospital at any point during his March 2016 incarceration, that it would have changed his outcome?

A No.

MR. HOWE: Objection to form.

Q (By Ms. Ah Loy) I think I might have already asked

this. Did you ever personally observe Michael Smith fall?

A No.

Q Did you ever personally observe Michael Smith lying on the floor?

A No.

Q Did you ever personally observe Michael Smith sitting in his own urine or feces?

A Oh, no.

Q Did anyone at the Muskogee County Jail tell you that they had personally observed Michael Smith fall?

A No.

Q Did anyone at the Muskogee County Jail tell you that they had personally observed Michael Smith lying on the floor in his own waste?

A No.

Q When you saw Michael Smith and examined him, did he tell you that he had passed out earlier in his incarceration?

A No.

Q Did anyone else --

A And he was moving without limitation.

MS. AH LOY: I think that's all my questions. I'll pass the witness.

THE WITNESS: Wow.

CROSS-EXAMINATION

BY MR. ARTUS:

Q I have a few questions. It's Andy Artus. I'm the attorney for Sheriff Frazier. I can say, hopefully, I have not very long, because there have been a lot of questions asked.

I represent Sheriff Frazier in his official capacity, who's been sued in this case, and the Board of County Commissioners of Muskogee County.

And from listening to your testimony, I got the impression -- and I just want to make sure that I got the correct impression -- that the policy at the jail at the time these incidents are alleged to have occurred, which would have been March 15th, 2016, through April 2nd, 2016, would you agree that the policy at the jail was to provide medical care to inmates?

A Yes, sir.

Q And that same thing for Turn Key: Turn Key had a policy to provide medical care to inmates?

A Yes, sir.

Q Okay. Would it be against the policy of the jail to deny inmates medical care?

A Absolutely unequivocally so.

Q And at the time that we're talking about, I think I understood it to say that you didn't work for the jail

but you worked as an contract employee, you think, for Turn Key?
A I believe.
Q Okay. But definitely not for the jail; correct?
A No. That is correct.
Q You agree with that?
A Yes, sir.
Q And did you, at any time during this treatment -- during his stay there, during your times you saw him or reviewing the records, did at any time you realize that he had a cord compression?
A No.
Q And did you or -- did you or, to your knowledge, anyone from Turn Key instruct any jailers to send him to the hospital?
A No.
Q And the jailers generally provide -- follow the -- your instructions. If you tell a jailer to take him to the hospital, they would do that?
A Oh, yes, sir.
Q And same thing with the medical staff, the jailers follow what the medical staff says?
A In fact, they're usually more than willing.
Q Would you agree that the jailers follow what you --
A Oh, yes.

Q -- or any medical staff says to do? Is that correct?

A Yes, sir.

Q Okay. And do you agree -- following up on what was asked just a few minutes ago, do you agree that letting an inmate lay in his own urine or feces would be against policy?

A Beyond the shadow of a doubt, yes, sir.

Q Okay. For the jail and for Turn Key? Would you agree with that?

A Yes.

MR. HOWE: Objection to form. That --

THE WITNESS: Yes.

MR. ARTUS: I think that's all I've got.

THE WITNESS: Wow.

MR. ARTUS: I pass the witness.

MR. HOWE: Allen?

We have no further questions.

MS. AH LOY: Yes. He'll read and sign.

(Deposition concluded)

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